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*To ensure access to high-quality,  
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care to Los Angeles County residents  
through direct services at DHS facilities  
and through collaboration with  
community and university partners.*



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May 15, 2012

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF EQUIPMENT MAINTENANCE AND REPAIR SERVICES  
AGREEMENT FOR AUTOMATED MEDICATION MANAGEMENT SYSTEMS  
WITH TALYST INC.  
(4TH AND 5TH DISTRICTS)  
(3 VOTES)**

**SUBJECT**

Request approval of a sole source Agreement with Talyst Inc. for equipment maintenance and repair services for automated medication management systems at Department of Health Services' facilities.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Authorize the Director of Health Services (Director), or his designee, to execute a sole source Agreement with Talyst Inc. (Talyst), effective on Board approval with a term of five years, with an option to extend the Agreement for an additional six months on a month-to-month basis, for a maximum term of five years and six months, for the provision of equipment maintenance and repair services for automated medication management systems located at Harbor-UCLA Medical Center (H-UCLA MC) and Olive View-UCLA Medical Center (OV-UCLA MC), with maximum obligation of \$758,654 for the five year term of the Agreement, if fully extended
2. Delegate authority to the Director, or his designee, to amend the Agreement to i) increase the total annual maximum obligation by no more than 40 percent of the first year maximum obligation for a total potential annual increase of \$58,896 to be utilized for additional equipment coming off warranty, to add equipment at other Department of Health Services' (DHS)

facilities, to cover emergency or unforeseen needed equipment maintenance and repair services, and to provide as needed staff training and ii) exercise the month-to-month extension subject to review and approval by County Counsel, with notice to your Board and the Chief Executive Office (CEO).

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Approval of the first recommendation will allow the Director, or his designee, to execute a sole source Agreement, substantially similar to Exhibit I, to obtain equipment maintenance and repair services for the automated medication management systems located at H-UCLA MC and OV-UCLA MC. The automated medication management systems are used to provide a vital part of patient care and are designed to provide comprehensive inventory control for down-to-the-dose accountability management of medication dispensing of pharmaceuticals for inpatient care. The system includes Talyst proprietary software that is designed to automate prescription ordering, receiving, stocking, picking, dispensing, as well as recalling medications and tracking lot numbers and expiration dates of medications. These systems require a maintenance service agreement to guarantee timely preventative maintenance and repair services to ensure compliance with all accrediting and licensing agencies' requirements such as The Joint Commission.

The Talyst systems also provide an automated packaging and barcode label application for medication orders to ensure prescriptions are ready for dispensing at the patient's bedside. The patient's hospital identification wrist band and the prescription barcode are scanned for verification before medications are given to the patient. This system is designed to increase patient safety and fulfill The Joint Commission standards for handling high-alert medications that increase the risk of causing significant patient harm when medications are used in error. The consequences of medication errors of this type can be devastating to patients' health. Since Talyst provides the essential proprietary software for these systems, it is appropriate that the County contract with Talyst for the required services.

Approval of the second recommendation will provide the Director, or his designee, delegated authority: (1) to amend the Agreement to increase the annual maximum obligation up to 40 percent, if necessary, to cover equipment coming off warranty, to add DHS facilities, to cover emergency or unforeseen needed repair services, and to provide as-needed staff training, and (2) to exercise the extension options. DHS believes that the 40 percent increase in annual maximum obligation is appropriate since adding even a few pieces of equipment or adding additional facilities to the Agreement may use up the added funding provided under the 40 percent increase allotment. This increase will ensure that the facilities are able to continue to provide critical patient care and do not in any way jeopardize patient safety.

In accordance with Board Policy 5.120, on April 25, 2012, DHS provided your Board with the required two-week advance notice prior to this Board meeting with detailed justification of intent to request a delegation of authority to increase the annual maximum obligation by 40 percent.

### **Implementation of Strategic Plan Goals**

The recommended actions support Goal 4, Health and Mental Health, of the County's Strategic Plan.

### **FISCAL IMPACT/FINANCING**

The total five year maximum obligation for the Agreement, if fully extended, for equipment

maintenance and repair services is \$758,654. The maximum obligation for each facility is identified on Attachment A.

The total potential increase under the 40 percent delegated authority for the Agreement is \$1,053,134 and will be funded using existing resources.

Funding is included in DHS' Fiscal Year 2011-12 Final Budget and will be requested in future fiscal years as necessary.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

DHS purchased the automated medication management systems from CareFusion, LLC (Carefusion), who is the original equipment manufacturer (OEM). The equipment is installed and operating at H-UCLA MC and OV-UCLA MC. CareFusion uses Talyst software to operate the equipment and officially designates Talyst as the assignee designated firm to provide service and support through a mutual partnering relationship between the firms. Talyst also provides specialized training to maintain the software, including training for field technicians and help desk support teams. In order to ensure that the equipment performs in accordance with equipment specifications and due to the relationship between the OEM and Talyst, a sole source justification for the recommended Talyst Agreement is attached as Attachment B.

Under the approved maintenance agreement, Talyst will provide regular preventive maintenance, as needed repair, and software support services to meet manufacturer specifications. Talyst will also supply system updates and 24-hour seven days a week telephone support.

During Talyst's review of the County's standard terms and conditions, DHS was notified by Talyst that a number of the terms and conditions were unacceptable. DHS Contracts and Grants staff, with guidance from County Counsel and the Chief Executive Office (CEO) Risk Management aggressively negotiated the terms and conditions in an effort to finalize an Agreement with Talyst to provide critical maintenance and support services. Attachment C identifies the negotiated Agreement terms requested by Talyst that deviate from County's standard provisions. DHS believes that the risk is mitigated as Talyst has been providing preventive maintenance service to County for the last year, and there has been no instance of any problems or service issues. Also, during the negotiations, DHS was able to obtain the same pricing rates agreed upon previously for a three (3) year fixed rate.

DHS has determined that this is not a Proposition A Agreement because the services are provided on a part-time or intermittent basis, and therefore, provisions of the County's Living Wage Program County Code Charter 2.201 do not apply.

County Counsel has approved Exhibit I as to form.

### **CONTRACTING PROCESS**

N/A.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The Honorable Board of Supervisors

5/15/2012

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Approval of the recommendations will ensure the availability of critical maintenance and repair services for automated medication management systems equipment located at H-UCLA MC and OV-UCLA MC.

Respectfully submitted,

A handwritten signature in black ink, reading "Mitchell Katz". The signature is written in a cursive, flowing style.

Mitchell H. Katz, M.D.

Director

MHK:jec

Enclosures


c: Chief Executive Office  
Acting County Counsel  
Executive Office, Board of Supervisors

**ATTACHMENT A**

**TALYST INC.**  
**PREVENTIVE MAINTENANCE & REPAIR SERVICES AGREEMENT**  
**AUTOMATED MEDICATION MANAGEMENT SYSTEM**

	ANNUAL COST					
DHS FACILITIES	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL COST
Harbor-UCLA Medical Center	\$73,620	\$73,620	\$73,620	\$77,301	\$81,166	\$379,327
Olive View-UCLA Medical Center	\$73,620	\$73,620	\$73,620	\$77,301	\$81,166	\$379,327
<b>TOTAL MAXIMUM OBLIGATION</b>	<b>\$147,240</b>	<b>\$147,240</b>	<b>\$147,240</b>	<b>\$154,602</b>	<b>\$162,332</b>	<b>\$758,654</b>

## SOLE SOURCE CHECKLIST

Check (√)	JUSTIFICATION FOR SOLE SOURCE CONTRACTS
	Identify applicable justification and provide documentation for each checked item.
	<ul style="list-style-type: none"> <li>Only one bona fide source for the service exists; performance and price competition are not available.</li> </ul>
	<ul style="list-style-type: none"> <li>Quick action is required (emergency situation).</li> </ul>
	<ul style="list-style-type: none"> <li>Proposals have been solicited but no satisfactory proposals were received.</li> </ul>
	<ul style="list-style-type: none"> <li>Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.</li> </ul>
X	<ul style="list-style-type: none"> <li>Maintenance service agreements exist on equipment which must be serviced by the authorized manufacturer's service representatives.</li> </ul> <p>The Department of Health Services purchased the automated medication management systems from CareFusion, LLC (Carefusion), who is the original equipment manufacturer. CareFusion uses Talyst Inc. (Talyst) proprietary software to operate the equipment and officially designates Talyst as the assignee designated firm to provide service and support through a mutual partnering relationship between the firms.</p> <p>Talyst is the only vendor that can provide the support and specialized training to maintain the equipment to ensure that the equipment performs in accordance with equipment specification and to The Joint Commission standards.</p>
	<ul style="list-style-type: none"> <li>It is most cost-effective to obtain services by exercising an option under an existing contract.</li> </ul>
	<ul style="list-style-type: none"> <li>It is in the best interest of the County e.g., administrative cost savings, excessive learning curve for a new service provider, etc.</li> </ul>
	<ul style="list-style-type: none"> <li>Other reason. Please explain:</li> </ul>
<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="text-align: center;">   Sheila A. Shima  Deputy Chief Executive Officer, CEO </div> <div style="text-align: center;"> 4/13/12  Date </div> </div>	

**TALYST INC.  
EQUIPMENT MAINTENANCE AND REPAIR SERVICES AGREEMENT  
FOR  
AUTOMATED MEDICATION MANAGEMENT SYSTEM**

**NEGOTIATED AGREEMENT TERMS**

<b>Agreement Paragraph</b>	<b>Revised Language</b>
<b>8.28 INDEMNIFICATION</b>	<p>The following paragraph has been added to the INDEMNIFICATION Paragraph limiting Contractor's liability to the firm's maximum insurance level of five million dollars.</p> <p>"Contractor shall have no liability for costs and expenses for claims made as a result of the County's negligent acts or omissions. Limitation on Liability - Contractor's total liability to County arising out of or in connection with this Agreement, whatever the cause of action, where in contract, warranty, negligence, strict liability or otherwise, will not be, in the aggregate, in excess of five million dollars."</p>
<b>8.29.4 Failure to Maintain Insurance</b>	<p>The following provision has been revised as indicated and deemed acceptable by Risk Management.</p> <p>"Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Agreement. <del>County, at its sole discretion, may obtain damages from Contractor resulting from said breach. Alternatively, the County may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue Contractor reimbursement.</del>"</p>
<b>8.29.6 Contractor's Insurance Shall Be Primary</b>	<p>The following provision has been revised as indicated and deemed acceptable by Risk Management.</p> <p>"Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary <u>and any</u> <del>with respect to all other sources of coverage available to Contractor.</del> Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage."</p>

Agreement Paragraph	Revised Language
<b>8.29.7 Waivers of Subrogation</b>	<p>The following provision has been revised as indicated and deemed acceptable by Risk Management.</p> <p>“To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)’ rights of recovery against County under all the <u>general liability and auto liability, Required Insurance</u> for any loss arising from or relating to this Agreement <u>relevant to such coverage</u>. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.”</p>
<b>8.29.14 County Review and Approval of Insurance Requirements</b>	<p>The following provision has been revised as indicated and deemed acceptable by Risk Management.</p> <p>“The County reserves the right to review and <u>reasonably</u> adjust the Required Insurance provisions, conditioned upon County’s determination of changes in risk exposures, <u>upon prior written request to Contractor.</u>”</p>
<b>8.38 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW</b>	<p>The following provision has been revised indicated and deemed acceptable by Risk Management.</p> <p>“The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees <u>located in County of Los Angeles</u>, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit I of this Agreement and is also available on the Internet at <a href="http://www.babysafela.org">www.babysafela.org</a> for printing purpose.”</p>

**DEPARTMENT OF HEALTH SERVICES**



**AGREEMENT**

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**

**AND**

**TALYST INC.**

**FOR**

**AUTOMATED MEDICATION MANAGEMENT SYSTEM**

**EQUIPMENT PREVENTIVE MAINTENANCE AND REPAIR SERVICES**

AGREEMENT PROVISIONS  
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### **STANDARD EXHIBITS**

- A STATEMENT OF WORK
- B PRICING SCHEDULE
- C CONTRACTOR'S PROPOSED SCHEDULE *(Intentionally Omitted)*
- D CONTRACTOR'S EEO CERTIFICATION
- E COUNTY'S ADMINISTRATION
- F CONTRACTOR'S ADMINISTRATION
- G CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY  
AGREEMENT
- H JURY SERVICE ORDINANCE
- I SAFELY SURRENDERED BABY LAW

### **UNIQUE EXHIBIT**

- J MEDICAL HEALTH SCREENING

Agreement No. \_\_\_\_\_

**AGREEMENT BY AND BETWEEN  
COUNTY OF LOS ANGELES  
AND  
TALYST INC.  
FOR  
AUTOMATED MEDICATION MANAGEMENT SYSTEM  
EQUIPMENT PREVENTIVE MAINTENANCE AND REPAIR SERVICES**

This Agreement and Exhibits (hereinafter referenced to as "Agreement") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012 by and between the County of Los Angeles, hereinafter referred to as County and Talyst Inc., hereinafter referred to as Contractor.

**RECITALS**

WHEREAS, pursuant to sections 1441, 1445 and 1451 of the California Health and Safety Code and sections 26227 and 31000 of the California Government Code. County has established and operates, through its Department of Health Services (hereafter "DHS"), County facilities (hereafter collectively referred to as "Facility(ies)"; and

WHEREAS, the Contractor is a private firm specializing in providing preventive maintenance and repair services for automated medication storage and inventory management system for pharmacy equipment; and

WHEREAS, County desires the services of a Contractor to provide preventive maintenance and repair services on an intermittent, part-time basis; and

WHEREAS, County has determined that the services to be provided under this Agreement are of a technical nature to the extent that DHS is unable to recruit qualified personnel with the requisite training, knowledge, or experience to perform such services; and

WHEREAS, Contractor is authorized under the laws of the State of California to engage in the business of providing preventive maintenance and repair services for equipment, and possesses the competence, expertise, and personnel necessary to provide such services described hereunder; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

## **1.0 APPLICABLE DOCUMENTS**

Exhibits A, B, C, D, E, F, G, H, I, and J are attached to and form a part of this Agreement. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Agreement and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Agreement and then to the Exhibits according to the following priority.

### **Standard Exhibits:**

- 1.1 EXHIBIT A - Statement of Work
- 1.2 EXHIBIT B - Pricing Schedule
- 1.3 EXHIBIT C - Contractor's Proposed Schedule (*Intentionally Omitted*)
- 1.4 EXHIBIT D - Contractor's EEO Certification
- 1.5 EXHIBIT E - County's Administration
- 1.6 EXHIBIT F - Contractor's Administration
- 1.7 EXHIBIT G - Contractor Acknowledgement and Confidentiality Agreement
- 1.8 EXHIBIT H - Jury Service Ordinance
- 1.9 EXHIBIT I - Safely Surrendered Baby Law

### **Unique Exhibits:**

- 1.10 EXHIBIT J – Medical Health Screening

This Agreement and the Exhibits hereto constitute the complete and exclusive statement of understanding between the parties, and supersedes all previous agreements, written and oral, and all communications between the parties relating to the subject matter of this Agreement. No change to this Agreement shall be

valid unless prepared pursuant to sub-paragraph 8.1 - Amendments and signed by both parties.

## **2.0 DEFINITIONS**

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 Agreement:** Contract executed between County and Contractor. It sets forth the terms and conditions for the issuance and performance of the Statement of Work, Exhibit A.
- 2.2 Contract:** Agreement executed between County and Contractor.
- 2.3 Contractor:** The sole proprietor, partnership, limited liability company or corporation that has entered into an Agreement with the County to perform or execute the work covered by the Statement of Work.
- 2.4 Contractor Project Manager:** The individual designated by the Contractor to administer the Agreement operations after the Agreement award.
- 2.5 Day(s):** Calendar day(s) unless otherwise specified.
- 2.6 DHS:** Department of Health Services
- 2.7 Director:** Director of Health Services or his/her authorized designee.
- 2.8 Facility:** Facilities within Department of Health Services.
- 2.9 Facility Project Director:** Person designated to administrator matters relating to this Agreement.
- 2.10 Facility Project Manager:** Person designated to manage the operations under this Agreement.
- 2.11 Facility Project Monitor:** Person with responsibility to oversee the day to day activities of this Agreement. Responsibility for inspections of any and all tasks, deliverables, goods, services and other work provided by the Contractor.
- 2.12 Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.

### **3.0 WORK**

- 3.1 Pursuant to the provisions of this Agreement, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth herein.
- 3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this Agreement, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

### **4.0 TERM OF AGREEMENT**

- 4.1 The term of this Agreement shall be five (5) years commencing after execution by County's Board of Supervisors through the five (5) year term, unless sooner terminated or extended, in whole or in part, as provided in this Agreement.
- 4.2 The County shall have the sole option to extend this Agreement term for additional six (6) months on month to month bases, for a maximum total Agreement term of five (5) years and six (6) months. Each such option and extension shall be exercised at the sole discretion of the Director or his/her designee as authorized by the Board of Supervisors.
- 4.3 The Contractor shall notify DHS when this Agreement is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to the DHS at the address herein provided in Exhibit E - County's Administration.

### **5.0 AGREEMENT SUM, BILLING AND PAYMENT**

- 5.1 The Contractor shall be paid in accordance with Exhibit B – Pricing Schedule.
- 5.2 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of

same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the County's express prior written approval. Notwithstanding the above, County agrees that MERA (Medical Equipment Repair Associates) may be subcontracted by Contractor for the purposes of providing services under this Agreement.

- 5.3 The Contractor shall maintain a system of record keeping that will allow the Contractor to determine when it has incurred seventy-five percent (75%) of the total Agreement authorization under this Agreement. Upon occurrence of this event, the Contractor shall send written notification to DHS at the address herein provided in Exhibit E - County's Administration.

**5.4 No Payment for Services Provided Following Expiration/ Termination of Agreement**

The Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Agreement. Should the Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Agreement.

**5.5 Invoices and Payments**

- 5.5.1 The Contractor shall invoice the County in advance for the monthly support fees to provide the tasks, deliverables, goods, services, and other work specified in Exhibit A - Statement of Work and elsewhere hereunder. The Contractor shall prepare invoices, which shall include the charges owed to the Contractor by the County under the terms of this Agreement. The Contractor's payments

shall be as provided in Exhibit B - Pricing Schedule, and the Contractor shall be paid only for the tasks, deliverables, goods, services, and other work approved in writing by the County. If the County does not approve work in writing no payment shall be due to the Contractor for that work.

5.5.2 Contractor's invoices shall reflect prices in accordance with Exhibit B - Pricing Schedule. Invoices that are submitted incorrectly will not be paid. Incorrect invoice will be returned to Contractor for correction.

5.5.3 The Contractor's invoices shall contain the information set forth in Exhibit A - Statement of Work describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.

5.5.4 The Contractor shall submit the monthly invoices to the County by the 15<sup>th</sup> calendar day of the month prior to the month of service.

5.5.5 All invoices under this Agreement shall be submitted in two (2) copies to the following address:

**County of Los Angeles**  
**Harbor-UCLA Medical Center**  
Attn: General Accounting Unit, Box 479  
1000 West Carson Street, Building 3.5  
Torrance, CA 90509

**County of Los Angeles**  
**Olive View-UCLA Medical Center**  
Attn: Materials Management  
14445 Olive View Drive  
Sylmar, CA 91342

**5.5.6 County Approval of Invoices**

All invoices submitted by the Contractor for payment must have the written approval of the Facility Project Manager prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld.

## **5.6 Maximum Obligation of County**

- 5.6.1 The maximum obligation of County for all services provided hereunder shall not exceed Seven Hundred Fifty Eight Thousand, Six Hundred Fifty Four (\$758,654) effective date of execution for the five (5) year term.
- 5.6.2 During the term of this Agreement, the Director or designee may amend Exhibit B – Pricing Schedule to add or delete equipment inventory or add or delete DHS facilities and may increase the maximum obligation by no more than 40% of the total annual maximum obligation.

## **6.0 COUNTY ADMINISTRATION**

The Director shall have the authority to administer this Agreement on behalf of the County. Director retains professional and administrative responsibility for the services rendered under this Agreement. A listing of all County Administration referenced in the following sub-paragraphs is designated in Exhibit E - County's Administration. The County shall notify the Contractor in writing of any change in the names or addresses shown.

### **6.1 Facility Project Director**

Responsibilities of the Facility Project Director include:

- ensuring that the objectives of this Agreement are met; and
- providing direction to the Contractor in the areas relating to County policy, information requirements, and procedural requirements.

### **6.2 Facility Project Manager**

The responsibilities of the Facility Project Manager include:

- meeting with the Contractor Project Manager on a regular basis; and
- inspecting any and all tasks, deliverables, goods, services, or other work provided by or on behalf of the Contractor.

The Facility Project Manager is not authorized to make any changes in any of the terms and conditions of this Agreement and is not authorized to further obligate County in any respect whatsoever.

### **6.3 Facility Project Monitor**

The Facility Project Monitor is responsible for overseeing the day-to-day administration of this Agreement. The Facility Project Monitor reports to the Facility Project Manager.

## **7.0 ADMINISTRATION OF AGREEMENT - CONTRACTOR**

### **7.1 Contractor Project Manager**

- 7.1.1 The Contractor Project Manager is designated in Exhibit F - Contractor's Administration. The Contractor shall notify the County in writing of any change in the name or address of the Contractor Project Manager.
- 7.1.2 The Contractor Project Manager shall be responsible for the Contractor's day-to-day activities as related to this Agreement and shall coordinate with Facility Project Manager and Facility Project Monitor on a regular basis.
- 7.1.3 The Contractor Project Manager shall be County's single point of contact for all service issues and ensure that the Contractor's support desk will provide adequate documentation on County's service request tickets to streamline service processes.

### **7.2 Contractor's Authorized Official(s)**

- 7.2.1 Contractor's Authorized Official(s) are designated in Exhibit F. Contractor shall promptly notify County in writing of any change in the name(s) or address(es) of Contractor's Authorized Official(s).
- 7.2.2 Contractor represents and warrants that all requirements of Contractor have been fulfilled to provide actual authority to such officials to execute documents under this Agreement on behalf of Contractor.

### **7.3 Approval of Contractor's Staff**

County has the absolute right to reasonably approve or disapprove all of the Contractor's staff performing work hereunder and any proposed changes in the Contractor's staff, including, but not limited to, the Contractor Project Manager.

### **7.4 Contractor's Staff Identification**

Contractor shall provide, at Contractor's expense, all staff providing services under this Agreement with a photo identification badge, notwithstanding, all approved subcontractors (as specified in section 5.2, above) shall have photo identification badges from their respective companies.

### **7.5 Background and Security Investigations**

7.5.1 All Contractor staff performing work under this Agreement may undergo and pass, to the satisfaction of County, a background investigation as a condition of beginning and continuing to work under this Agreement. County shall use its discretion in determining the method of background clearance to be used, which may include but is not limited to fingerprinting. The fees associated with obtaining the background information shall be at the expense of the Contractor, regardless if the Contractor's staff passes or fails the background clearance investigation. County may perform the background check and bill Contractor for the cost or deduct such amount from funds owed by County to Contractor.

7.5.2 County may request that the Contractor's staff be immediately removed from working on the County Agreement at any time during the term of this Agreement. County will not provide to the Contractor nor to the Contractor's staff any information obtained through the County conducted background clearance.

7.5.3 County may immediately, at the sole discretion of the County, deny or terminate facility access to the Contractor's staff that do

not pass such investigation(s) to the satisfaction of the County whose background or conduct is incompatible with County facility access.

- 7.5.4 Disqualification, if any, of the Contractor's staff, pursuant to this sub-paragraph 7.5, shall not relieve the Contractor of its obligation to complete all work in accordance with the terms and conditions of this Agreement.

## **7.6 Confidentiality**

- 7.6.1 Contractor shall maintain the confidentiality of all records and information, including, but not limited to, billings, County records and patient records, in accordance with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.
- 7.6.2 Contractor shall indemnify, defend, and hold harmless County, its Special Districts, elected and appointed officers, employees, and agents, from and against claims, demands, damages, liabilities, losses, costs and expenses, without limitation, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with this sub-paragraph 7.6. Any legal defense pursuant to Contractor's indemnification obligations under this sub-paragraph 7.6 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without

limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or make any admission, in each case, on behalf of County without County's prior written approval.

7.6.3 Contractor shall insure that all of its officers, employees, agents and subcontractors providing services hereunder comply with the confidentiality provisions of this Agreement.

7.6.4 Contractor shall sign and adhere to the provisions of the Exhibit G -Contractor Acknowledgement and Confidentiality Agreement.

## **7.7 Medical Health Screening**

Contractor shall ensure that all of its staff providing services and/or entering a DHS Facility, under this Agreement at the time of participation hereunder, have undergone and successfully passed a current physical health examination, consistent with current DHS policy and Exhibit J - Medical Health Screening. The cost of the Medical Health Screening shall be at the expense of the Contractor.

The Pre-placement or Pre-assignment Health Clearance Packets, Annual Health Screening Packet, and EHS Policies may be accessed at: [http://cg.dhs.lacounty.gov/EHS\\_Forms/EHSBLANKFORM.htm](http://cg.dhs.lacounty.gov/EHS_Forms/EHSBLANKFORM.htm).

## **7.8 Staff Performance under the Influence**

Contractor shall not knowingly permit any employee to perform services under this Agreement while under the influence of any alcoholic beverage, medication, narcotic, or other substance which might impair their physical or mental performance.

# **8.0 STANDARD TERMS AND CONDITIONS**

## **8.1 AMENDMENTS**

8.1.1 For any change which affects the scope of work, term, Agreement Sum, payments, or any term or condition included under this

Agreement, an Amendment shall be prepared by the County and then executed by the Contractor and by the Board of Supervisors.

- 8.1.2 The County's Board of Supervisors or designee may require the addition and/or change of certain terms and conditions in the Agreement during the term of this Agreement. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors. To implement such changes, an Amendment to the Agreement shall be prepared by the County and then executed by the Contractor and by the Director or his/her designee. Notwithstanding the above, no Amendment shall govern unless it is mutually executed by the County and Contractor.
- 8.1.3 The Director or his/her designee may at his/her sole discretion, authorize extensions of time as defined in the Agreement, Paragraph 4.0 – Term of Agreement. The Contractor agrees that such extensions of time shall not change any other term or condition of this Agreement during the period of such extensions. To implement an extension of time, an Amendment to the Agreement shall be prepared by the County and then executed by the Contractor and by the Director or his/her designee.
- 8.1.4 The Director or his/her designee, may require, at his/her sole discretion, the addition and/or change of certain terms and conditions in the Agreement to conform to changes in federal or state law or regulation or County policy, during the term of this Agreement. The County reserves the unilateral right to add and/or change such provisions as required by law, regulation or County policy, to preserve this Agreement's conformity and compliance to federal and state law or regulation or County policy as deemed necessary by the County's Board of Supervisors, County Counsel or the Chief Executive Officer. Notwithstanding the above, no

Amendment shall govern unless it is mutually executed by the County and Contractor.

- 8.1.5 The Director or his/her designee may amend Exhibit B – Pricing Schedule to add or delete equipment inventory or add or delete DHS facilities.
- 8.1.6 The Director or his/her designee may increase the maximum obligation by more than 40% of the total maximum obligation of Agreement to accommodate increase in cost due to additional service and equipment inventory.

## **8.2 ASSIGNMENT AND DELEGATION**

- 8.2.1 The Contractor shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of County, which shall not be unreasonably withheld, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.
- 8.2.2 Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.

8.2.3 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

### **8.3 AUTHORIZATION WARRANTY**

The Contractor represents and warrants that the person executing this Agreement for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.

### **8.4 BUDGET REDUCTIONS**

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County Agreements, the County reserves the right to reduce its payment obligation under this Agreement correspondingly for that fiscal year and any subsequent fiscal year during the term of this Agreement (including any extensions), and the services to be provided by the Contractor under this Agreement shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such actions. Except as set forth

in the preceding sentence, the Contractor shall continue to provide all of the services set forth in this Agreement.

**8.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER  
COVERED TRANSACTIONS (45 C.F.R. PART 76)**

Contractor hereby acknowledges that the County is prohibited from contracting with and making sub-awards to parties that are suspended, debarred, ineligible, or excluded or whose principals are suspended, debarred, ineligible, or excluded from securing federally funded contracts. By executing this Agreement, Contractor certifies that neither it nor any of its owners, officers, partners, or directors or other principals is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts. Further, by executing this Agreement, Contractor certifies that, to its knowledge, none of its subcontractors, at any tier, or any owner, officer, partner, director, or other principal of any subcontractor is currently suspended, debarred, ineligible, or excluded from securing federally funded contracts. Contractor shall immediately notify County in writing, during the term of this Agreement, should it or any of its subcontractors or any principals of either be suspended, debarred, ineligible, or excluded from securing federally funded contracts. Failure of Contractor to comply with this provision shall constitute a material breach of this Agreement upon which the County may immediately terminate or suspend this Agreement.

**8.6 COMPLAINTS (Intentionally Omitted)**

**8.7 COMPLIANCE WITH APPLICABLE LAWS, RULES AND REGULATIONS**

8.7.1 In the performance of this Agreement, Contractor shall comply with all current and applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, including, but not limited to standards of The Joint Commission, its National Patient Safety Goals, California Code of Regulations, Title 22, Division 5 regulations and all other applicable

industry best practices standards. All provisions required thereby to be included in this Agreement are incorporated herein by reference.

- 8.7.2 Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, administrative penalties and fines assessed, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this sub-paragraph 8.7 shall be conducted by Contractor and performed by counsel selected by Contractor and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by County in doing so. Contractor shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.

## **8.8 COMPLIANCE WITH CIVIL RIGHTS LAWS-**

### **ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION LAWS**

- 8.8.1 The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17); the Fair Employment & Housing Act, Government Code Section 12920-12922; and Affirmative Action in County Agreements, Chapter 4.32 of the Los Angeles County Code to the end that no person shall, on the grounds of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.
- 8.8.2 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- 8.8.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 8.8.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation.
- 8.8.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religious creed, ancestry, national origin, sex, sexual orientation, age, physical or mental disability, medical condition, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement.
- 8.8.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours, subject to prior written notice and subject to Contractor's security requirements to verify compliance with the provisions of this sub-paragraph 8.8.
- 8.8.7 If the County finds that any provisions of this sub-paragraph 8.8 have been violated, such violation shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement. A determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Agreement.

8.8.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Agreement, the County shall, at its sole option, be entitled to the sum of Two Hundred Fifty Dollars (\$250) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.

8.8.9 **Anti-discrimination in Services:**

Contractor shall not discriminate in the provision of services hereunder because of race, color, religious creed, national origin, ethnic group identification, ancestry, age, sex, sexual orientation, medical condition, marital status, political affiliation, or physical or mental disability in accordance with requirements of Federal and State laws. For the purpose of this sub-paragraph, discrimination in the provision of services may include, but is not limited to, the following: Denying any person any service or benefit or the availability of a facility; providing any service or benefit to a person which is not equivalent or is provided in a non-equivalent manner or at a non-equivalent time, from that provided to others; subjecting any person to segregation or separate treatment in any manner related to the receipt of any service; restricting any person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and treating any person differently from others in determining admission, enrollment quota, eligibility, membership, or any other requirements or conditions which persons must meet in order to be provided any service or benefit. Contractor shall take affirmative action to ensure that intended beneficiaries of this Agreement are provided services without regard to race, color, religious creed, national origin, ethnic group identification, ancestry, sex, sexual orientation, age, medical condition, marital status, political affiliation, physical or mental disability.

8.8.10 The Contractor shall certify to, and comply with, the provisions of Exhibit D - Contractor's EEO Certification.

## **8.9 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM**

### **8.9.1 Jury Service Program:**

This Agreement is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit H and incorporated by reference into and made a part of this Agreement.

### **8.9.2 Written Employee Jury Service Policy.**

1. Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.
2. For purposes of this sub-paragraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any

California resident who is a full-time employee of the Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any subcontractor to perform services for the County under the Agreement, the subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the Agreement.

3. If the Contractor is not required to comply with the Jury Service Program when the Agreement commences, the Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the Contractor shall immediately notify the County if the Contractor at any time either comes within the Jury Service Program's definition of "Contractor" or if the Contractor no longer qualifies for an exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Agreement and at its sole discretion, that the Contractor demonstrate, to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the

Contractor continues to qualify for an exception to the Program.

4. Contractor's violation of this sub-paragraph of the Agreement may constitute a material breach of the Agreement. In the event of such material breach, County may, in its sole discretion, terminate the Agreement and/or bar the Contractor from the award of future County Agreements for a period of time consistent with the seriousness of the breach.

#### **8.10 CONFLICT OF INTEREST**

- 8.10.1 No County employee whose position with the County enables such employee to influence the award or administration of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.
- 8.10.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with

the provisions of this sub-paragraph shall be a material breach of this Agreement.

**8.11 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST**

Should the Contractor require additional or replacement personnel after the effective date of this Agreement to perform the services set forth herein, the Contractor shall give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Agreement.

**8.12 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS**

8.12.1 Should the Contractor require additional or replacement personnel after the effective date of this Agreement, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. If the Contractor decides to pursue consideration of GAIN/GROW participants for hiring, the Contractor shall provide information regarding job openings and job requirements to DPSS' GAIN/GROW staff at [GAINGROW@dpss.lacounty.gov](mailto:GAINGROW@dpss.lacounty.gov). The County will refer GAIN/GROW participants by job category to the Contractor.

8.12.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

## **8.13 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

### **8.13.1 Responsible Contractor**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible Contractors.

### **8.13.2 Chapter 2.202 of the County Code**

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other Agreements which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Agreement, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Contractor may have with the County.

### **8.13.3 Non-responsible Contractor**

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or

submitted a false claim against the County or any other public entity.

#### **8.13.4 Contractor Hearing Board**

1. If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor Project Manager shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.
3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in

its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### **8.13.5 Subcontractors of Contractor**

These terms shall also apply to subcontractors of County Contractors.

#### **8.14 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business if located in Los Angeles County. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at [www.babysafela.org](http://www.babysafela.org).

#### **8.15 CONTRACTOR'S EXCLUSION FROM PARTICIPATING IN A FEDERALLY FUNDED PROGRAM**

8.15.1 Contractor hereby warrants that neither it nor any of its staff members is restricted or excluded from providing services under any health care program funded by the Federal government, directly or indirectly, in whole or in part, and that Contractor will notify Director within ten (10) calendar days in writing of: (1) any event that would require Contractor or a staff member's mandatory exclusion from participation in a Federally funded health care program; and (2) any exclusionary action taken by any agency of the Federal government against Contractor or one or more staff members barring it or the staff members from participating in a Federally funded health care program, whether such bar is direct or indirect, or whether such bar is in whole or in part.

- 8.15.2 Contractor shall indemnify and hold County harmless against any and all loss or damage County may suffer arising from any Federal exclusion of Contractor or its staff members from such participation in a Federally funded health care program.
- 8.15.3 Failure by Contractor to meet the requirements of this subparagraph shall constitute a material breach of contract upon which County may immediately terminate or suspend this Agreement.

**8.16 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

- 8.16.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.
- 8.16.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Agreement to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Agreement maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

#### **8.17 CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

8.17.1 Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

8.17.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this Agreement will maintain compliance, with Los Angeles Code Chapter 2.206.

#### **8.18 COUNTY'S QUALITY ASSURANCE PLAN**

8.18.1 The County or its agent will evaluate the Contractor's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Agreement terms and conditions and performance standards identified in the Statement of Work. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board of Supervisors.

8.18.2 The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Agreement or impose other penalties as specified in this Agreement.

8.18.3 The County maintains databases that track/monitor Contractor performance history. Information entered into such databases may be used for a variety of purposes, including determining whether the County will exercise a contract term extension option.

## **8.19 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS**

- 8.19.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the gross negligence or willful misconduct of Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after the Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence or such other time as the parties may agree to in writing.
- 8.19.2 If the Contractor fails to make timely repairs, County may make any necessary repairs to return the property to its prior pre-damaged state. All costs incurred by County, as documented by paid receipts, for such repairs shall be repaid by the Contractor by cash payment upon demand.
- 8.19.3 County reserves the unilateral right to make any repairs to property damaged by Contractor which Director determines, in his/her reasonable discretion, to be a public safety issue requiring immediate repair. County will bill Contractor for the cost of said repair or deduct said cost from any outstanding amounts owed by County to Contractor.

## **8.20 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 8.20.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as

they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

8.20.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

#### **8.21 FACSIMILE REPRESENTATIONS**

The County and the Contractor hereby agree to regard facsimile representations or scanned versions of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Agreement, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

#### **8.22 FAIR LABOR STANDARDS**

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

### **8.23 FEDERAL ACCESS TO RECORDS**

If, and to the extent that, Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. Section 1395x(v)(1)(I)) is applicable, Contractor agrees that for a period of five (5) years following the furnishing of services under this Agreement, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Controller General of the United States, or to any of their authorized representatives, the Agreements, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of services provided hereunder. Furthermore, if Contractor carries out any of the services to the County as provided hereunder through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization (as that term is defined under Federal law), Contractor agrees that each such subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

### **8.24 CONTRACTOR PERFORMANCE DURING CIVIL UNREST OR DISASTER**

The Contractor recognizes that health care facilities maintained by County provide care essential to the residents of the communities they serve, and that these services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster, or similar event. Notwithstanding any other provision of this Agreement, full performance by Contractor during any riot, insurrection, civil unrest, natural disaster or similar event is not excused if such performance remains physically possible. Failure to comply with this requirement shall be considered a material breach by Contractor for which County may immediately terminate this Agreement.

## **8.25 GOVERNING LAW, JURISDICTION, AND VENUE**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

## **8.26 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) AND THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)**

- 8.26.1 Contractor expressly acknowledges and agrees that the provision of services under this Agreement does not require or permit access by Contractor or any of its officers, employees, or agents, to any patient medical records. Accordingly, Contractor shall instruct its officers, employees, and agents that they are not to pursue, or gain access to, patient medical records for any reason whatsoever.
- 8.26.2 Notwithstanding the forgoing, the parties acknowledge that in the course of the provision of services hereunder, Contractor or its officers, employees, and agents, may have inadvertent access to patient medical records. Contractor understands and agrees that neither it nor its officers, employees, or agents, are to take advantage of such access for any purpose whatsoever.
- 8.26.3 Additionally, in the event of such inadvertent access, Contractor and its officers, employees, and agents, shall maintain the confidentiality of any information obtained and shall notify Director that such access has been gained immediately, or upon the first reasonable opportunity to do so. In the event of any access, whether inadvertent or intentional, Contractor shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all liability, including but not limited to, actions, claims, costs, demands, expenses, and fees (including attorney and expert witness fees) arising from or

connected with Contractor's or its officers', employees', or agents', access to patient medical records. Contractor agrees to provide appropriate training to its employees regarding their obligations as described hereinabove.

## **8.27 INDEPENDENT CONTRACTOR STATUS**

- 8.27.1 This Agreement is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
- 8.27.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.
- 8.27.3 The Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.
- 8.27.4 The Contractor shall adhere to the provisions stated in the Agreement, sub-paragraph 7.6 - Confidentiality.

## **8.28 INDEMNIFICATION**

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Agreement.

Contractor shall have no liability for costs and expenses for claims made as a result of the County's negligent acts or omissions. Limitation on Liability - Contractor's total liability to County arising out of or in connection with this Agreement, whatever the cause of action, where in contract, warranty, negligence, strict liability or otherwise, will not be, in the aggregate, in excess of five million dollars.

## **8.29 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE**

Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 8.29 and 8.30 of this Agreement. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other Contractual obligation imposed upon Contractor pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Agreement.

### **8.29.1 Evidence of Coverage and Notice to County**

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to

County at the address shown below and provided prior to commencing services under this Agreement.

- Renewal Certificates shall be provided to County not less than 10 days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.
- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles  
Department of Health Services  
Contracts and Grants Division  
313 N. Figueroa Street, 6<sup>th</sup> Floor East  
Los Angeles, CA 90012  
Attention: Kathy K. Hanks, C.P.M.  
Director, Contract Administration & Monitoring

And

County of Los Angeles  
Department of Health Services  
Centralized Contract Monitoring Division  
5555 Ferguson Drive, Suite 210  
Commerce, CA 90022

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

#### **8.29.2 Additional Insured Status and Scope of Coverage**

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full

policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

**8.29.3 Cancellation of or Changes in Insurance**

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Agreement, in the sole discretion of the County, upon which the County may suspend or terminate this Agreement.

**8.29.4 Failure to Maintain Insurance**

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Agreement.

**8.29.5 Insurer Financial Ratings**

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

**8.29.6 Contractor's Insurance Shall Be Primary**

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary and any County maintained

insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

**8.29.7 Waivers of Subrogation**

To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under the general liability and auto liability, for any loss arising from or relating to this Agreement relevant to such coverage. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

**8.29.8 Sub-Contractor Insurance Coverage Requirements**

Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

**8.29.9 Deductibles and Self-Insured Retentions (SIRs)**

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

#### **8.29.10 Claims Made Coverage**

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

#### **8.29.11 Application of Excess Liability Coverage**

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

#### **8.29.12 Separation of Insureds**

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

#### **8.29.13 Alternative Risk Financing Programs**

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

#### **8.29.14 County Review and Approval of Insurance Requirements**

The County reserves the right to review and reasonably adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures, upon prior written request to Contractor.

### **8.30 INSURANCE COVERAGE**

**8.30.1 Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$2 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

**8.30.2 Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

**8.30.3 Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

#### **8.30.4 Professional Liability/Errors and Omissions**

Insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$2 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

#### **8.31 LICENSES, PERMITS, REGISTRATIONS, ACCREDITATIONS, AND CERTIFICATES**

Contractor shall obtain and maintain in effect during the term of this Agreement, all valid licenses, permits, registrations, accreditations, and certificates required by law which are applicable to its performance of this Agreement, and shall ensure that all of its officers, employees, and agents who perform services hereunder obtain and maintain in effect during the term of this Agreement, all licenses, permits, registrations, accreditations, and certificates required by law which are applicable to their performance of services hereunder. All such licenses, permits, registrations, accreditations, and certifications relating to services hereunder shall be made available to County upon request.

#### **8.32 LIQUIDATED DAMAGES**

8.32.1 If, in the judgment of the Director, or his/her designee, the Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the Director, or his/her designee, at his/her option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from the Contractor's invoice for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the Contractor from the County, will be forwarded to the Contractor by the Director, or his/her designee, in a written notice describing the reasons for said action.

8.32.2 If the Director, or his/her designee, determines that there are deficiencies in the performance of this Agreement that the Director, or his/her designee, deems are correctable by the Contractor over a certain time span, the Director, or his/her designee, will provide a written notice to the Contractor to correct the deficiency within specified time frames. Should the Contractor fail to correct deficiencies within said time frame, the Director, or his/her designee, may: (a) Deduct from the Contractor's payment, pro rata, those applicable portions of the Monthly Agreement Sum; and/or (b) Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of the Contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is specified in the Performance Requirements Summary (PRS) Chart, defined in Exhibit A - Statement of Work, Attachment 3 hereunder, and that the Contractor shall be liable to the County for liquidated damages in said amount. Said amount shall be deducted from the County's payment to the Contractor; and/or (c) Upon giving five (5) days notice to the Contractor for failure to correct the deficiencies, the County may correct any and all deficiencies and the total costs incurred by the County for completion of the work by an alternate source, whether it be County forces or separate private Contractor, will be deducted and forfeited from the payment to the Contractor from the County, as determined by the County.

8.32.3 The action noted in sub-paragraph 8.32.2 shall not be construed as a penalty, but as adjustment of payment to the Contractor to recover the County cost due to the failure of the Contractor to complete or comply with the provisions of this Agreement.

8.32.4 This sub-paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Agreement provided by law or as specified in the PRS or sub-paragraph 8.32.2, and shall not, in any manner, restrict or limit the County's right to terminate this Agreement as agreed to herein.

**8.33 MOST FAVORED PUBLIC ENTITY (Intentionally Omitted).**

**8.34 NON EXCLUSIVITY**

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Agreement shall not restrict the Department of Health Services from acquiring similar, equal or like goods and/or services from other entities or sources.

**8.35 NOTICE OF DELAYS**

Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within three (3) business days or as soon as reasonably practical thereafter, give notice thereof, including all relevant information with respect thereto, to the other party.

**8.36 NOTICE OF DISPUTES**

The Contractor shall bring to the attention of the Facility Project Manager any dispute between the County and the Contractor regarding the performance of services as stated in this Agreement. If the Facility Project Manager is not able to resolve the dispute, the Director or his/her designee shall resolve it.

**8.37 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such

notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

### **8.38 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees located in County of Los Angeles, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit I of this Agreement and is also available on the Internet at [www.babysafela.org](http://www.babysafela.org) for printing purpose.

### **8.39 NOTICES**

8.39.1 All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibit E - County's Administration and Exhibit F - Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party.

8.39.2 **Electronic Notice:** In addition, and in lieu of written notification, either party shall have the authority to issue any notice to the other party electronically via e-mail at the designated email address as identified in Exhibit F – Contractor's Administration or to County at the email address provided. This includes all notices or demands required or permitted by either party under this Agreement.

### **8.40 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, the Contractor and the County agree that, during the term of this Agreement and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any

employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

#### **8.41 PUBLIC RECORDS ACT**

8.41.1 Any documents submitted by the Contractor; all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to sub-paragraph 8.43 - Record Retention and Inspection/Audit Settlement of this Agreement; as well as any documents that may have been submitted in response to a solicitation process for this Agreement, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

8.41.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

#### **8.42 PUBLICITY**

8.42.1 The Contractor shall not disclose any details in connection with this Agreement to any person or entity except for its legal or financial advisors and as may be otherwise provided hereunder or required

by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Agreement within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Agreement, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the Director or his/her designee. The County shall not unreasonably withhold written consent.

8.42.2 The Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Agreement with the County of Los Angeles, provided that the requirements of this sub-paragraph 8.42 shall apply.

#### **8.43 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT**

8.43.1 The Contractor shall maintain, and provide upon request by County, accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement.

8.43.2 The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and

proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County, subject to prior written notice and subject to Contractor's security requirements, during the term of this Agreement and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location, which costs shall be at a maximum amount of two thousand dollars (\$2,000) per audit.

- 8.43.3 In the event that an audit of the Contractor is conducted specifically regarding this Agreement by any Federal or State auditor, including audits conducted by the Medicare and Medi-Cal programs, or both, then the Contractor shall file a copy of each such audit report, including Statement of Auditing Standards No. 70 Type 2 Reports, with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 8.43.4 Failure on the part of the Contractor to comply with any of the provisions of this sub-paragraph 8.43 shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement.
- 8.43.5 If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, representatives of the County conduct an audit of the Contractor

regarding the work performed under this Agreement, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment within thirty (30) days of receipt of demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Agreement or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment within thirty (30) days of receipt of demand, provided that in no event shall the County's maximum obligation for this Agreement exceed the funds appropriated by the County for the purpose of this Agreement.

#### **8.44 RECYCLED BOND PAPER**

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Agreement.

#### **8.45 RESTRICTIONS ON LOBBYING**

If any Federal funds are to be used to pay for Contractor's services under this Agreement, Contractor shall fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations, and shall ensure that each of its subcontractors receiving funds provided under this Agreement also fully complies with all such certification and disclosure requirements.

#### **8.46 SUBCONTRACTING**

8.46.1 The requirements of this Agreement may not be subcontracted by the Contractor without the advance approval of the County. Notwithstanding the above, the parties acknowledge and agree

that Contractor may use MERA (Medical Equipment Repair Associates) for the provision of services. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Agreement.

- 8.46.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:
- A description of the work to be performed by the subcontractor;
  - A draft copy of the proposed subcontract; and
  - Other pertinent information and/or certifications requested by the County.
- 8.46.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the Contractor employees.
- 8.46.4 The Contractor shall remain fully responsible for all performances required of it under this Agreement, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.
- 8.46.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. The Contractor is responsible to notify its subcontractors of this County right.
- 8.46.6 The Director or his/her designee is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.
- 8.46.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising

through services performed hereunder, notwithstanding the County's consent to subcontract.

8.46.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to:

County of Los Angeles  
Department of Health Services  
Contracts and Grants Division  
313 N. Figueroa Street – 6<sup>th</sup> Floor East  
Los Angeles, CA 90012  
Attention: Kathy K. Hanks, C.P.M.  
Director, Contract Administration & Monitoring

before any subcontractor employee may perform any work hereunder.

**8.47 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN  
COMPLIANCE WITH COUNTY'S CHILD SUPPORT  
COMPLIANCE PROGRAM**

Failure of the Contractor to maintain compliance with the requirements set forth in sub-paragraph 8.16 - Contractor's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Agreement. Without limiting the rights and remedies available to the County under any other provision of this Agreement, failure of the Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Agreement pursuant to sub-paragraph 8.50 - Termination for Default and pursue debarment of the Contractor, pursuant to County Code Chapter 2.202.

**8.48 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in sub-paragraph 8.17 - Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this Agreement and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

**8.49 TERMINATION FOR CONVENIENCE**

8.49.1 This Agreement may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than sixty (60) days after the notice is sent.

8.49.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Agreement on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.49.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Agreement shall be maintained by the Contractor in accordance

with sub-paragraph 8.43, Record Retention and Inspection/Audit Settlement.

## **8.50 TERMINATION FOR DEFAULT**

8.50.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Agreement, if, in the judgment of the Director or his/her designee.

- Contractor has materially breached this Agreement; or
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Agreement; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement, or of any obligations of this Agreement and in either case, fails to demonstrate convincing progress toward a cure within seven (7) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.50.2 In the event that the County terminates this Agreement in whole or in part as provided in sub-paragraph 8.50.1, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The Contractor shall continue to provide the support services hereunder for a period of three (3) months during the transition period at no charge to County. The Contractor shall continue the performance of this Agreement to the extent not terminated under the provisions of this sub-paragraph.

8.50.3 Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in sub-paragraph 8.50.2 if its failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include,

but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or Contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this sub-paragraph, the term "subcontractor(s)" means subcontractor(s) at any tier.

8.50.4 If, after the County has given notice of termination under the provisions of this sub-paragraph 8.50, it is determined by the County that the Contractor was not in default under the provisions of this sub-paragraph 8.50, or that the default was excusable under the provisions of sub-paragraph 8.50.3, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to sub-paragraph 8.49 - Termination for Convenience.

8.50.5 The rights and remedies of the County provided in this sub-paragraph 8.50 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **8.51 TERMINATION FOR IMPROPER CONSIDERATION**

8.51.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this

Agreement if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to the Contractor's performance pursuant to this Agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.

- 8.51.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Fraud Hotline at (800) 544-6861 or [www.lacountyfraud.org](http://www.lacountyfraud.org).
- 8.51.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

## **8.52 TERMINATION FOR INSOLVENCY**

- 8.52.1 The County may terminate this Agreement forthwith in the event of the occurrence of any of the following:
- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
  - The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
  - The appointment of a Receiver or Trustee for the Contractor; or

- The execution by the Contractor of a general assignment for the benefit of creditors.

8.52.2 The rights and remedies of the County provided in this subparagraph 8.52 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

### **8.53 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which the County may in its sole discretion, immediately terminate or suspend this Agreement.

### **8.54 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Agreement, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Agreement during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Agreement in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

### **8.55 UNLAWFUL SOLICITATION**

Contractor shall inform all of its officers and employees performing services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with section 6150) of Business and Professions Code of the

State of California (i.e. State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and shall take positive and affirmative steps in its performance hereunder to ensure that there is no violation of said provisions by its officers and employees. Contractor agrees that if a patient requests assistance in obtaining the services of any attorney, it will refer the patient to the attorney referral service of all those bar associations within Los Angeles County that have such a service.

#### **8.56 VALIDITY**

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **8.57 WAIVER**

No waiver by the County of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this sub-paragraph 8.57 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

#### **8.58 WARRANTY AGAINST CONTINGENT FEES**

8.58.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

8.58.2 For breach of this warranty, the County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## **9.0 UNIQUE TERMS AND CONDITIONS**

### **9.1 NO INTENT TO CREATE A THIRD PARTY BENEFICIARY CONTRACT**

Notwithstanding any other provision of this Agreement, the parties do not in any way intend that any person shall acquire any rights as a third party beneficiary of this Agreement.

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IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Agreement to be executed by its Director of Health Services, and Contractor has caused this Agreement to be executed on its behalf by its duly authorized officer, on the day, month and year first above written.

COUNTY OF LOS ANGELES

By \_\_\_\_\_  
Mitchell H. Katz, M.D.  
Director of Health Services

CONTRACTOR

\_\_\_\_\_  
TALYST INC.

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

## **EXHIBIT A**

# **STATEMENT OF WORK**

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## 1.0 SCOPE OF WORK

Contractor shall maintain and provide services described in Exhibit A for automated medication management systems for the Department of Health Services (DHS) facilities and equipment listed in Exhibit B - Pricing Schedule. Contractor's services shall include, but not be limited to, the following:

- A. Routine Preventive Maintenance Services;
- B. As-needed Support and Repair Services;
- C. Telephone technical support;

## 2.0 DEFINITIONS

Unless otherwise expressly provided or the context otherwise requires, the following definitions for the terms identified below shall be understood to be the meaning of such terms where used in this Exhibit A – Statement of Work.

- 2.1 “Equipment or System” – shall mean any Contractor instrument, apparatus, machine, including Talyst software, components, parts, accessories, replacements, and/or upgrades, which were installed by Contractor.
- 2.2 “Routine Preventive Maintenance Services” – shall mean services performed by Contractor to ensure that the equipment shall be capable of performing in all material respects in accordance with manufacturer specifications and maintaining such performance under the terms of this Agreement, at the rates set forth in Exhibit B – Pricing Schedule.
- 2.3 “As Needed Support and Repair Services” – shall mean the support and repair needed for restoration of equipment so that it is performing in all material respects in accordance with its manufacturer specifications, on an as-needed basis, as may be required by the Facility. The repair process may also include all software and hardware updates, enhancements, and corrections.

### **3.0 REQUIRED SERVICES**

Contractor shall provide the following services for equipment listed in this Agreement at the facilities listed in Attachment 1. Contractor shall provide sufficient staff to ensure compliance with response times and repair commitments.

#### **3.1 Routine Preventive Maintenance Services**

3.1.1 Contractor shall provide each Facility with an annual Preventive Maintenance (PM) service schedule for all equipment covered under this Agreement.

3.1.2 Contractor shall provide PM services during Facility's operating hours, on days and times mutually agreed upon by the Facility Project Manager and Contractor.

3.1.3 Contractor shall perform regularly scheduled number of PM services to meet the requirements set by manufacturer specifications and all appropriate licensing and accrediting agencies [e.g., The Joint Commission, Occupational Safety and Health Administration ("OSHA"), and Title 22].

3.1.4 Routine PM services exclude major overhaul, special services, installation of equipment, equipment relocation, and modification or refurbishing of equipment.

#### **3.2 As Needed Support and Repair Services**

3.2.1 Contractor shall provide support and repair services twenty-four (24) hours per day, seven (7) days per week, and 365 days a year.

3.2.2 Contractor shall provide technical support and services via telephone within four (4) hours from time request for service was reported by Facility.

3.2.3 Contractor shall provide telephone technical support with respect to the equipment and software and/or by remote access through dial-ins or high-speed access to all of the equipment on which the Contractor software is operating. On-site visits required because of

County's lack of high speed remote access will be charged to County at the rates stated in Exhibit B

3.2.4 Contractor shall provide such services to include all travel costs, labor and parts, including any necessary equipment enhancement necessary to correct issue at no additional cost to County. All replacement parts shall be new or equivalent to new parts.

3.2.5 If the support call is determined to be mission-critical by County, Contractor shall escalate on-site support within twenty-four (24) hours. If the Contractor determines that the equipment cannot be immediately repaired, then Contractor's service representative shall indicate, in writing, an estimated time frame for repair. If available, Contractor shall provide County with temporary replacement of equipment, if equipment repairs exceed twenty-four (24) hours of downtime.

3.2.6 Contractor shall provide any bug fixes, patches, minor enhancements, updates and modifications to the Contractor hardware and software whenever available at no additional charge to County.

3.2.7 Contractor shall rework improperly repaired equipment and supply all necessary parts and materials for the equipment to function pursuant to its specifications at no additional cost to County.

3.2.8 Contractor shall replace any defective parts purchased and installed by Contractor and shall repair any damage so that the equipment functions pursuant to its specifications at no additional cost to County.

### 3.3 Service Reports

Contractor shall develop and maintain a written service report of all services provided on all equipment identified under this Agreement. Such service report(s) shall include:

- 3.3.1 A record of maintenance in accordance with the manufacturer specification and provide such other information as required by the Facility in order to meet all licensing, accrediting and regulatory agency requirements.
- 3.3.2 Clearly identify the equipment serviced by model number, serial number, Los Angeles County Capital Asset Leasing or Los Angeles County number (if available).
- 3.3.3 Include an itemization and description of services performed, including electrical checks and calibration reading and preventive maintenance.
- 3.3.4 Identify the name of the service technician who performed the service, service date, and list any parts installed during repair site visit.
- 3.3.5 A copy of such service report shall be given to the Facility at the time the service is performed. Such service reports are the property of County and shall remain on-site at each Facility.

#### 3.4 Contractor's Work Schedule

- 3.4.1 Contractor shall submit a work schedule for each Facility to the Facility Project Manager for review and approval, within ten (10) days prior to starting any pre-scheduled work. Facility Project Manager will review and approve prior to Contractor starting work. Said work schedules shall be set on an annual calendar identifying all the required ongoing maintenance tasks and task frequencies. The schedules shall list the time frames by day of the week, morning, and afternoon the tasks will be performed.
- 3.4.2 Contractor shall submit revised schedules when actual performance differs substantially from planned performance. Said revisions shall be submitted to the Facility Project Manager for

review and approval within five (5) working days prior to scheduled time for work.

### 3.5 Exclusions

Contractor is not financially responsible to provide the repair services above should any repair be required by causes other than ordinary use of the equipment. Such causes include, but are not limited to: (i) abuse, neglect or misuse; (ii) use of unauthorized parts or failure to maintain the Equipment in accordance with Contractor's written instructions (including without limitation, any relevant documentation and Support Bulletins); (iii) installation, configuration, relocation or re-installation of the Equipment or Software by anyone other than Contractor; (iv) unauthorized modifications, enhancements or additions made by anyone other than Contractor, (v) causes other than ordinary use under normal conditions, including without limitation, accident, fire or water damage, neglect, air conditioning failure or humidity control failure; (vi) failure by County to put in place and maintain site requirements; (vii) use of the Equipment or Software with any equipment, accessories, components, consumables or software not provided by Contractor hereunder specifically for use therewith (unless previously approved in writing by Contractor); (viii) failure of County to install and use updates of the software provided by Contractor; (ix) user created reports; or, (x) use of a canister for any medication other than the manufacturer-specific medication for which the canister was built. Any services provided by Contractor with respect to any of the foregoing exclusions or for any other cause that is not attributable to Contractor will be billed to County at Contractor's then current rates for such services. Support services are not provided for barcode scanners and UPS's.

## **4.0 ADDITIONAL SERVICES**

Prior to performing any additional services not covered in this Statement of Work, the Contractor shall prepare and submit a written description of the work with an estimate of labor and materials. In the event that additional services are

required, such services shall be billed to County at the hourly rates described in Exhibit B – Pricing Schedule. Services not identified in the Statement of Work shall require the approval of the Facility Project Manager. In any case, no service shall commence without written authorization.

## **5.0 RESPONSIBILITIES**

### **County**

#### **5.1 Personnel**

The County will administer the Agreement according with the Agreement, Paragraph 6.0, –County Administration. Specific duties will include:

- 5.1.1 Monitoring the Contractor's performance in the daily operation of this Agreement.
- 5.1.2 Providing direction to the Contractor in areas relating to policy, information and procedural requirements.
- 5.1.3 Preparing Amendments in accordance with the Agreement, Paragraph 8.0, Standard Terms and Conditions, sub-paragraph 8.1, Amendments.
- 5.1.4 County will document and promptly report to Contractor all detected errors or malfunctions of the Equipment or Software with sufficient detail to enable Contractor to reproduce or recreate the nonconformance. County will take all necessary or recommended actions to correct or address such errors or malfunctions within a reasonable time after such actions have been communicated to County by Contractor.
- 5.1.5 County will be solely responsible for (i) providing appropriate supervision and management of the use of the Equipment and Software by its personnel and agents and (ii) the implementation of any backup facilities and/or plans for all computer programs and data in the event of errors or malfunction of the Software or

Equipment. Support for Browser and Internet connections are County's responsibility.

5.1.6 County's compliance with all Service Bulletins.

5.1.7 County must provide Contractor at least 30 business days written notice of any changes to the County side of any interfaces or of any changes to County's computing systems or software that may cause such changes ("County Change"). Any work Contractor must perform to support any County Change is not included in Support; if Contractor elects to perform such work, Contractor will charge County at its then current rates.

## **Contractor**

### **5.2 Contractor Personnel**

5.2.1 Contractor shall designate a Contractor Project Manager to lead and coordinate Contractor's provision of services described hereunder and act as a central point of contact with County personnel. Contractor Project Manager shall be available during business of Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding County holidays.

5.2.2 Contractor Project Manager shall be responsible for scheduling, and staffing needed to properly provide services hereunder.

5.2.3 Contractor Project Manager shall institute and maintain appropriate supervision of all persons providing services pursuant to this Agreement. Further, unless directed pursuant to this Agreement by Director to do otherwise, Contractor shall work independently on designated assignments in accordance with the Statement of Work duties contained hereunder.

5.2.4 Contractor service personnel shall be appropriately licensed, certified, credentialed, and trained in accordance with Contractor requirement to perform the PM and repair services hereunder.

5.2.5 Contractor shall assume the sole responsibility for the timely completion of all activities assigned or to be performed hereunder.

5.3 Medication Handling

Contractor's employees and agents shall not physically handle County's medications. County must be physically present and capable of observing Contractor's employees during any service activity or in any situation in which Contractor's employees have access to County's medications. In the event County employee is not available, services shall be rescheduled on a day and time mutually agreed upon by the Facility and Contractor. Any delay in services to be provided hereunder due to County's lack of employee availability under this provision shall not be attributable to Contractor's time restrictions for performance nor be considered a breach of contract.

5.4 Risk Management Program

Contractor shall, in collaboration with Facility staff, develop and maintain an Equipment Risk Management Program. Such Program shall require written documentation of all medical incidents that involve equipment covered under this Agreement, whereby such equipment has or may have caused or contributed to a patient's injury, serious illness, or death. Such documentation shall describe the incident, the equipment involved in the medical incident, and any subsequent examination of such equipment.

5.5 Reporting Responsibility

When the Contractor is aware that a condition exists wherein there is imminent danger of injury to the public or damage to property, Contractor shall immediately contact the Facility Project Manager or his/her designee.

5.6 Materials and Equipment

Contractor shall purchase all materials and equipment to provide the services covered under this SOW at no charge. Contractor shall use materials and equipment that are safe for the environment and safe for use by the employees.

#### 5.7 Software Escrow Agreement

Deposit of Source Code - Talyst warrants that it has deposited the Source Code of the Licensed Software with an escrow agent pursuant to a written escrow agreement ("Escrow Agreement"). Within thirty (30) days of the Effective Date, Talyst will add Customer as a beneficiary to the Escrow Agreement at Customer's sole expense. Talyst will maintain the Escrow Agreement for the term of this Agreement and thereafter and will automatically deposit the Source Code of any Updates of the Licensed Software with such escrow agent. The Source Code delivered to the escrow agent will be in a form suitable for reproduction by Customer and will include (a) the full Source Code language statement, (b) a list of all third-party software used in support and maintenance or enhancement of the deposited Licensed Software, (c) the complete Documentation, and (d) all other materials necessary to allow a reasonably skilled third-party programmer to maintain, modify or enhance the Licensed Software without the assistance of any other person or the reference to any other material.

#### 5.8 Release of Deposit

The Escrow Agreement will provide that on the happening of any of the following events ("Trigger Events"), Customer may give written notice to the escrow agent, specifying the event, and the escrow agent will thereupon promptly deliver to Customer all deposited Source Code and related escrowed materials. The following events shall constitute a Trigger Event: (a) an uncured breach by Talyst of its Maintenance and Support obligations as set forth in this Agreement (only after Talyst is provided a reasonable period of time to cure such breach), (b) Talyst's failure to function as a going concern or operate in the ordinary course of business, or (c) in the event Talyst is subject to voluntary or involuntary bankruptcy. In the event the Source Code is released, Customer's use of the Source Code is solely limited to support and maintenance of the Software licensed to Customer.

#### 5.9 Training

County may schedule one (1) annual web based training session for each facility at no additional cost to County. Such training shall be scheduled at a mutually agreed upon time and onsite training shall be provided between the hours of between 8:00 a.m. and 5:00 p.m., local time, Monday-Friday, at the Installation Site.

#### 5.10 Contractor's Office

Contractor shall maintain an office with a telephone in the company's name where Contractor conducts business. The office shall be staffed during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, by at least one employee who can respond to inquiries and complaints which may be received about the Contractor's performance of the Agreement. When the office is closed, the Contractor shall have the capability to receive messages and respond within 4-hours after contact by County staff was made Contractor.

### **6.0 ADDITION/DELETION OF FACILITIES AND EQUIPMENT**

The Director of Department of Health Services or his designee (Director) may add and/or delete DHS Facility(s) and related equipment as necessary to provide service or to assure that Facility(s) operations are maintained. All changes must be made in accordance with the Agreement, sub-paragraph 8.1 Amendments.

### **7.0 QUALITY CONTROL**

7.1 The Contractor shall establish and utilize a comprehensive Quality Control Plan to assure the County has consistently high level of service throughout the term of the Agreement. The Plan shall be submitted to the Facility Project Manager for review. The plan shall include, but may not be limited to the following:

7.2 Contractor's method of monitoring to ensure that Agreement requirements are being met;

- 7.3 Contractor's procedures for conducting and maintaining complete records of all inspections, any corrective action taken, the time a problem was first identified, a clear description of the problem, and the time elapsed between identification and completed corrective action.
- 7.4 Contractor shall provide records of inspections and corrective actions to the County upon request.

## **8.0 QUALITY ASSURANCE PLAN**

The County will evaluate Contractor's performance under this Agreement using the quality assurance procedures as defined in the Agreement, sub-paragraph 8.18, County's Quality Assurance Plan.

### **8.1 Contract Discrepancy Report**

- 8.1.1 Verbal notification of a Contract discrepancy will be made to the Contractor Project Manager as soon as possible whenever an Agreement discrepancy is identified. The problem shall be resolved within a time period mutually agreed upon by the County and the Contractor.
- 8.1.2 The Facility Project Monitor will reasonably determine whether a formal Contract Discrepancy Report (Attachment 2) shall be issued. Upon receipt of this document, the Contractor is required to respond in writing to the Facility Project Monitor within five (5) workdays with a plan for correction of all deficiencies identified in the Contract Discrepancy Report.

### **8.2 County Observations**

In addition to departmental contracting staff, other County personnel may observe performance, activities, and review documents relevant to this Agreement at any time during normal business hours upon prior written notice and subject to Contractor's security regulations. However, these personnel may not unreasonably interfere with Contractor's performance.

## **9.0 EQUIPMENT PERFORMANCE STANDARDS**

- 9.1 The equipment shall be considered out-of-service if the equipment is inoperable and unusable or the County reasonably initiates down-time procedures due to lack of system or equipment functionality (in either case, not due to those items set forth in the definition of excluded services, or a force majeure event).
- 9.2 Contractor shall guarantee performance uptime for each piece of equipment at a minimum of 95% . If performance uptime for equipment listed in this agreement falls below 95% guaranteed performance uptime, County will deduct a credit from the next months invoice in accordance with Attachment 3 - Performance Requirements Summary (PRS) Chart.
- 9.3 Any credit for equipment downtime or out-of-services beyond 95% shall be applied to the following month's invoice. Failure by County to assess downtime credit in the following month's invoice shall not constitute a waiver of such right which County may exercise at any subsequent time.
- 9.4 Equipment uptime below the 80% uptime defined below, for five (5) consecutive calendar days or more, shall be considered as a default and County shall have the option to give Contractor notice thereof pursuant to the Termination for Default paragraph 8.50 of the Agreement Standard Terms and Conditions.
- 9.5 The equipment is considered out-of-service when it is not functioning according to the material specification of the user manual. "In service" is defined as in use or in stand-by status available for use by County.
- 9.6 Time spent on regularly scheduled maintenance will be excluded from these performance calculations. Additionally, time the equipment is not operable due to damage from misuse, operator error, inadequate environmental conditions concluding air conditioning, failure or fluctuations in County's electrical power supply, acts of God, strikes or fires, will also be excluded from these performance standards.

- 9.7 County staff shall maintain a log specifying the time, date, and the causes of all unplanned equipment downtime.
- 9.8 County will review the performance of each piece of equipment to evaluation uptime performance standard for equipment items covered under this Agreement.

## **10.0 PERFORMANCE REQUIREMENTS SUMMARY**

- 10.1 All listings of services used in the Performance Requirements Summary (PRS) are intended to be completely consistent with the Agreement and the SOW, and are not meant in any case to create, extend, revise, or expand any obligation of Contractor beyond that defined in the Agreement and the SOW. In any case of apparent inconsistency between services as stated in the Agreement, the SOW, and the PRS Chart, the meaning apparent in the Agreement and the SOW will prevail.
- 10.2 The Contractor is expected to perform all services described herein. The PRS Chart describes certain required services which will be monitored by the County during the term of the Agreement, and for which Contractor may be assessed financial deductions from payment if the service has not been satisfactorily provided. The PRS Chart indicates the SOW and/or Agreement section of the performance referenced (column 1); the service to be provided (column 2); the monitoring method that will be used (column 3); and the deductions/fees to be assessed for services that are not satisfactory (column 4).

**DEPARTMENT OF HEALTH SERVICES  
FACILITY LIST**

**County of Los Angeles**

**Harbor-UCLA Medical Center**

1000 West Carson Street  
Torrance, California 90509

Billing Address

County of Los Angeles  
Harbor-UCLA Medical Center  
Attn: General Accounting Unit, Box 479  
1000 West Carson Street, Building 3.5  
Torrance, California 90509

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**County of Los Angeles**

**Olive View-UCLA Medical Center**

14445 Olive View Drive  
Sylmar, California 91342

Billing Address

County of Los Angeles  
Olive View-UCLA Medical Center  
Attn: Materials Management,  
14445 Olive View Drive  
Sylmar, California 91342

**CONTRACT DISCREPANCY REPORT**

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

DATES: \_\_\_\_\_

Prepared: \_\_\_\_\_

Returned by Contractor: \_\_\_\_\_ Action Completed: \_\_\_\_\_

**DISCREPANCY PROBLEMS:**

\_\_\_\_\_  
\_\_\_\_\_

Signature of County Representative \_\_\_\_\_ Date \_\_\_\_\_

**CONTRACTOR RESPONSE:** *(Cause and Corrective Action)*

\_\_\_\_\_  
\_\_\_\_\_

Signature of Contractor Representative \_\_\_\_\_ Date \_\_\_\_\_

**COUNTY EVALUATION OF CONTRACTOR RESPONSE:**

\_\_\_\_\_  
\_\_\_\_\_

Signature of County Representative \_\_\_\_\_ Date \_\_\_\_\_

**COUNTY ACTIONS:** \_\_\_\_\_

**CONTRACTOR NOTIFIED OF ACTION:**

\_\_\_\_\_  
\_\_\_\_\_

County Representative's Signature and Date \_\_\_\_\_

Contractor Representative's Signature and Date \_\_\_\_\_

## PERFORMANCE REQUIREMENTS SUMMARY (PRS) CHART

SPECIFIC PERFORMANCE REFERENCE	SERVICE	MONITORING METHOD	DEDUCTION/FEEES TO BE ASSESSED
<b>ROUTINE PREVENTIVE MAINTENANCE SERVICES –</b> SOW – Sub-paragraph 3.1.3	Contractor shall perform regularly scheduled number of PM services to meet the requirements set by manufacturer specifications and all appropriate licensing and accrediting agencies [e.g., The Joint Commission, Occupational Safety and Health Administration (“OSHA”), and Title 22].	Inspection & Observation	\$500 Per occurrence – Contractor <b>did not</b> meet the PM requirements as stated in this Agreement.
<b>AS-NEEDED EQUIPMENT REPAIR SERVICES –</b> SOW – Sub-paragraph 3.2.2	Contractor shall provide technical support within four (4) hours from time request for services was reported by facility.	Inspection & Observation	\$100 Per occurrence – Contractor <b>did not</b> provide technical support within in four (4) hours after notification by County
<b>SERVICE REPORTS –</b> SOW – Sub-paragraph 3.3.5	A copy of such service report shall be given to the Facility at the time the service is performed. Such service reports are the property of County and shall remain on-site at each Facility.	Receipt of Service Report	\$100 Per occurrence - Contractor <b>did not</b> provide service report as stated in SOW.

## PERFORMANCE REQUIREMENTS SUMMARY (PRS) CHART

<b>EQUIPMENT PERFORMANCE STANDARDS –</b> SOW Sub-paragraph 9.2	Contractor shall guarantee performance uptime for each piece of equipment at a minimum of 95% based on 24/7 hours/days per week. If performance uptime for equipment listed in this agreement falls below 95% guaranteed performance uptime, County will deduct amount for damages from the next months invoice in accordance with this Attachment 3 - Performance Requirements Summary (PRS) Chart.	Inspection & Observation	\$100 Per occurrence – Contractor <b><u>did not</u></b> meet guaranteed performance uptime based on 24/7 hours/days per week for each piece of equipment at a minimum of 95 % (based on 24/7).  Credit to County for damages for equipment uptime less than 95%: 94.9% to 85% = \$100 credit 84.9% to 80% = \$200 credit Below 80% = \$500 credit
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**SUMMARY  
EXHIBIT B**

**TALYST INC.**  
**PREVENTIVE MAINTENANCE & REPAIR SERVICES AGREEMENT**  
**AUTOMATED MEDICATION MANAGEMENT SYSTEM**

	ANNUAL COST					
DHS FACILITIES	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL COST
Harbor-UCLA Medical Center	\$73,620	\$73,620	\$73,620	\$77,301	\$81,166	\$379,327
Olive View-UCLA Medical Center	\$73,620	\$73,620	\$73,620	\$77,301	\$81,166	\$379,327
<b>TOTAL COST</b>	<b>\$147,240</b>	<b>\$147,240</b>	<b>\$147,240</b>	<b>\$154,602</b>	<b>\$162,332</b>	<b>\$758,654</b>

## TALYST INC.

## HARBOR-UCLA MEDICAL CENTER

Quantity	Serial Number	Description	Annual Cost (Year 1 through 3)	Annual Cost (Year 4)	Annual Cost (Year 5)
1	2200000269	Auto-Carousel System	\$ 9,600	\$ 10,080	\$ 10,584
1	2200000270	Auto-Carousel System	\$ 9,600	\$ 10,080	\$ 10,584
1		Auto Label	\$ 5,280	\$ 5,544	\$ 5,821
1	K01SAY3FO	Packager	\$ 26,340	\$ 27,657	\$ 29,040
1		AutoPharm Workstation	\$ 10,200	\$ 10,710	\$ 11,246
1		AutoPharm Workstation	\$ 10,200	\$ 10,710	\$ 11,246
1		AutoPharm Zone Workstation	\$ 1,200	\$ 1,260	\$ 1,323
1		AutoPharm Zone Workstation	\$ 1,200	\$ 1,260	\$ 1,323
8			\$ 73,620	\$ 77,301	\$ 81,166

**GOLD Level Support Services**

- 1) Support will be provided 24 hours a day, 7 days a week, and 365 days a year.
- 2) Support calls will be responded to by Talyst by phone within four (4) hours; if the support call is determined to be mission-critical, Talyst will escalate and/or address within 24 hours (including , if appropriate, by providing on-site support within 24 hours).
- 3) Monthly service cost includes all travel expenses
- 4) One annual web-base training at no cost to County
- 5) On-Site Preventive Maintenance (PM) visits for each item of equipment in accordance with its

**Additional Services**

- 1) **Hourly Rate** @ - \$175.00 24 hours a day, 7 days a week and 365 days a year
- 2) **Mileage and Travel Expenses** - All mileage and travel fees are included in the service charge above and shall not be billed as a separate charge to County
- 3) **Additional Services** - All additional services will be paid under DHS Delegated Authority as stated in Agreement, sub-paragraph 8.1 - Amendments.

**TALYST INC.**  
**OLIVE VIEW-UCLA MEDICAL CENTER**

Quantity	Serial Number	Description	Annual Cost (Year 1 through 3)	Annual Cost (Year 4)	Annual Cost (Year 5)
1	2200000274	Auto-Carousel System	\$ 9,600	\$ 10,080	\$ 10,584
1	2200000275	Auto-Carousel System	\$ 9,600	\$ 10,080	\$ 10,584
1		Auto Label System	\$ 5,280	\$ 5,544	\$ 5,821
1	IOISAY3A6	Auto Pack System	\$ 26,340	\$ 27,657	\$ 29,040
1		AutoPharm Workstation	\$ 10,200	\$ 10,710	\$ 11,246
1		AutoPharm Workstation	\$ 10,200	\$ 10,710	\$ 11,246
1		AutoPharm Zone Workstation	\$ 1,200	\$ 1,260	\$ 1,323
1		AutoPharm Zone Workstation	\$ 1,200	\$ 1,260	\$ 1,323
8			\$ 73,620	\$ 77,301	\$ 81,166

**GOLD Level Support Services**

- 1) Support will be provided 24 hours a day, 7 days a week, and 365 days a year.
- 2) Support calls will be responded to by Talyst by phone within four (4) hours; if the support call is determined to be mission-critical, Talyst will escalate and/or address within 24 hours (including , if appropriate, by providing on-site support within 24 hours).
- 3) Monthly service cost includes all travel expenses
- 4) One annual web training at no cost to County
- 5) On-Site Preventive Maintenance (PM) visits for each item of equipment in accordance with its general PM schedule

**Additional Services**

- 1) **Hourly Rate @** - \$175.00 24 hours a day, 7 days a week and 365 days a year
- 2) **Mileage and Travel Expenses** - All mileage and travel fees are included in the service charge above and shall not be billed as a separate charge to County
- 3) **Additional Services** - All additional services will be paid under DHS Delegated Authority as stated in Agreement, sub-paragraph 8.1 - Amendments.